

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

In the Matter of)	
)	
AM/NS CALVERT, LLC)	
)	
Petitioner,)	Case No. 15-RM-246203
)	
and)	
)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER,)	
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL)	
AND SERVICE WORKERS INTERNATIONAL UNION)	
AFL-CIO, CLC)	
)	
Union,)	
_____)	

**UNION’S STATEMENT IN OPPOSITION TO EMPLOYER’S REQUEST FOR
REVIEW AND MOTION TO STAY ELECTION**

Respectfully submitted on this 28th day of
June, 2020

Brad Manzollilo
Organizing Counsel
United Steelworkers
60 Boulevard of the Allies
Five Gateway Center Room 913
Pittsburgh, PA 15222

BACKGROUND

On August 8, 2019, AM/NS Calvert, LLC (“Employer”) filed the RM petition in the above captioned case to determine if a majority of its production and maintenance employees at its Calvert, AL facility wish to be represented by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO, CLC, (“USW” or “the Union”). On March 10, 2020, Kathleen McKinney, the Regional Director for Region 15 of the National Labor Relations Board (“RD”) approved a stipulated election agreement between the parties which included provisions for approximately 155 individuals in disputed job classes to vote subject to challenge. The agreement was for a manual election with the bargaining unit consisting of approximately 1000 individuals including the 155 voting subject to challenge. There was also an agreement that, given the size and nature of the Calvert, AL operations, there would be 3 polling areas and multiple polling times and days with release schedules involving Board agents and observers for both parties.

Given the subsequent developments with the Coronavirus pandemic, the election was postponed by the Board. The Board allowed Regional Director’s to begin conducting elections in a safe and effective manner beginning on April 6, 2020. Given the current public health crisis, the RD determined that the only way to have a safe and effective election in this case was to have a mail ballot election. On April 23, 2020, the RD issued a Notice to Show Cause which requested the parties to provide any evidence why a hearing would be needed and why the RD should not direct a mail ballot. The Union responded that given the expansion of the virus into pandemic proportions that there should be a mail ballot election in this case. The Union further

agreed that there was no basis for having a Hearing since the question of the type of election to be held is the only issue and election arrangements are not litigable matters for pre-election hearings.

On June 10, 2020, the RD directed the election to be conducted via mail ballot. The Employer has filed a Request for Review and a Motion to Stay the Election. The Union offers this Statement in Opposition.

UNION'S RESPONSE

The Employer added no novel argument warranting Review. The Employer provides no legitimate basis for not having a mail ballot election under the current universally recognized public health crisis. Instead, most of the Employer's Request for Review contained arguments completely irrelevant to the question of whether or not it was appropriate for the RD to issue a direction for a mail ballot in this case. While the Union is certainly disappointed that the Employer refused to abide by the organizing and card check procedures it collectively bargained with the Union, the disagreement over that issue has absolutely no relevance over what type of election should take place to resolve the question of representation raised through the Employer's RM Petition.

Similarly, the Unfair Labor Practice Charges raised by the Employer in its Request for Review have no bearing on the question of the authority of the RD to direct a mail ballot election. The Employer's overly dramatized complaints serve as nothing more than pointless background noise aimed at confusing a very basic question. Does the RD have the discretion to

direct a mail ballot election during the current public health crisis rather than attempting to conduct what would be a very complicated manual election involving more than 1000 eligible voters spread out over a large facility with over 150 individuals scheduled to vote subject to challenge. The answer is the RD clearly has such authority and was well-reasoned in electing to do so.

There is no dispute that the Board has delegated to the Regional Directors discretion in determining whether an election should be conducted by manual balloting or mail ballot. See *San Diego Gas and Elec.*, 325 NLRB 1143 (1998); *Nouveau Elevator Industries, Inc.*, 326 NLRB 470 (1998). In *National Van Lines*, where an employer challenged a Regional Director's direction of a mail ballot election, the Board stated:

[Circumstances] surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions. Because of these circumstances, the Board has invested Regional Directors with broad discretion in determining the method by which elections shall be conducted. Only where it is affirmatively shown that a Regional Director has clearly abused the discretion afforded him to conduct representative elections will the Board nullify an election and prescribe other election standards. 120 NLRB 1343, 1346 (1958)

The National Labor Relations Board ("Board") has very recently confirmed this by denying the employer's Request for Review of a Regional Director's decision to direct a mail ballot election due to the pandemic in *Atlas Pacific Engineering Co.* 27-RC-258742 (Denial issued May 8, 2020).

As the Union presented in its response to the Order to Show Cause, this is a clear case where the RD should exercise their discretion to direct a mail ballot election for several reasons. First and most importantly, we are in the midst of a public health crisis of a level not seen in this

country in 100 years. The Employer contends that conditions have improved dramatically since the RD issued the Notice to Show Cause. In fact, according to its Department of Public Health, Alabama has seen continued and significant increases in the rate of documented Covid-19 cases over the last three weeks since the Governor lessened public safety measures in that state. There were recently over 1000 documented new cases on one day alone, the highest the state has seen since the crisis began with several other days nearing 1000. Nearby Mobile, Alabama is one of the hardest hit areas in the state.

It is not necessary to repeat all of the logistical issues and irresponsible risks detailed in the Union's response to the Notice to Show Cause or in the RD's direction of a mail ballot election. They can be summarized by just noting that conducting a manual election would require Board agents to travel to the facility where nearly 20 Board Agents and a large number of election observers would be required to conduct an election for nearly 1050 employees through a complex release schedule over multiple shifts over two days. There are also over 150 individuals who the parties have agreed will vote subject to challenge. Individuals who feel sick or have Covid-19 symptoms would either have to miss their opportunity to vote or would have to come into the facility and potentially risk exposing everyone else. This is simply irresponsible when a well-established mail ballot election process is available.

The Employer's arguments that conducting a manual election this complicated in a state with dramatically rising infection rates is somehow safer than individuals receiving their ballots via mail and signing them whenever they choose over a period of days and sending them back in by mail is so ludicrous that it is difficult to even respond to. Anyone who has made any effort at

all to keep up with the science behind how the Covid-19 virus is most efficiently spread would find the Employer's argument about comparable risks silly and desperate.

The Employer makes similarly silly assertions when it repeatedly refers to a mail ballot election as "card-check like." The Union believes that card check procedures using an experienced neutral form a sound basis for establishing whether a majority of employees in a bargaining unit support union representation.

At the same time, a procedure of soliciting and collecting cards to establish majority support through review by a neutral arbitrator cannot be compared to having the Board mail out confidential ballots to voters who fill them out in the privacy of their own homes and then mail them back. The Employer seems concerned that without managers hovering around their employees all day during an on-site manual election, some people may not feel as compelled to vote against union representation or may feel freer to exercise their right to choose not to vote. There is no other plausible explanation for their unwillingness to accept the RD's decision to direct a mail ballot election.

Board-conducted mail ballot elections have existed for many decades specifically to allow an RD to issue them when conducting a manual election would not be safe or practical. The Employer is simply attempting to connect them to a the completely separate issue of the validity of independent card check procedures in the hopes of further delaying the election to some unknown date where a manual election of this size and complexity can be held. .

The Employer does correctly note that the Union and the Employer both entered into a stipulated election agreement in early March of 2020, shortly before it became apparent how

serious the upcoming pandemic was. Neither party has at any time questioned any part of that stipulation except for the ability to conduct the election manually during this public health crisis.

As described above, the rate of Covid-19 cases in Alabama is rising and is currently at the highest levels to date. There is no telling how long it might take before it would be safe to conduct an on-site manual election this large and complex. These are circumstances the Board has never had to consider before the *Atlas* case. The election has already been delayed by more than three months and the only issue continuing to hold it up is the inability to safely hold a manual election of this nature during a public health crisis with no clear end in sight. The RD correctly determined that the only way to ensure employees' rights to an election can be safely upheld in these conditions is through a mail ballot election.

Finally, the Employer argues it was not allowed to present its arguments against a mail ballot election at a formal Hearing. Section 102.66(g)(1) of the Board's Rules and Regulations makes clear that the type of election is not a litigable issue and parties are not allowed to present evidence on the record beyond stating a position. That right has already been provided to both parties without a Hearing by way of the opportunity to respond to Notice to Show Cause. The Employer was not prejudiced in any way. Setting up a Hearing amidst the pandemic so the Employer can read the exact same arguments on to the record would be a waste of time and finite resources.

CONCLUSION

The Employer has presented no valid basis for the RD's direction of a mail ballot to be Reviewed. As such the Request should be denied and there is no need to stay the election and further delay it. The RD should be free to schedule dates for the ballots to be mailed out and returned.

Respectfully submitted,

/s/ Brad Manzolillo
Brad Manzolillo
Organizing Counsel
United Steelworkers
Five Gateway Center
Pittsburgh, PA 15222
(412) 562-2553
(412) 562-2555 (fax)
bmanzolillo@usw.org

CERTIFICATE OF SERVICE

I certify that on the 28th day of June, 2020, I caused the foregoing to be filed electronically with the with the Office of the Executive Secretary of the National Labor Relations Board and a copy of the same to be served by email on the following parties of record:

Rebecca Dormon
Assistant Regional Director
Rebecca.Dormon@nlrb.gov
Jordan Raby, Field Examiner
Jordan.Raby@nlrb.gov
National Labor Relations Board
Region 15
600 South Maestri Place
New Orleans, Louisiana 70130-3414

Counsel for the Employer
Marcel DeBruge, Esq.
mdebruge@burr.com
Ronald Flowers, Esq.
rflowers@burr.com
John Coleman, Esq.
jcoleman@burr.com
Burr & Forman LLP
420 North 20th Street , Suite 3400
Birmingham, Alabama 35203

/s/ Brad Manzolillo
Brad Manzolillo